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**From:** Campbell, Rich [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E27D0A99A96942119FF85AE2A6132062-RCAMPBEL]  
**Sent:** 3/5/2019 6:00:00 PM  
**To:** Kermish, Laurie [Kermish.Laurie@epa.gov]  
**Subject:** RE: Draft email for your review this morning

I spoke with Sylvia fyi about this.

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**From:** Goldmann, Elizabeth  
**Sent:** Tuesday, March 5, 2019 9:37 AM  
**To:** Quast, Sylvia <Quast.Sylvia@epa.gov>; Campbell, Rich <Campbell.Rich@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Kermish, Laurie <Kermish.Laurie@epa.gov>  
**Subject:** RE: Draft email for your review this morning

Hi Sylvia,

I am not aware of any inaccuracies with this email.

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**From:** Quast, Sylvia  
**Sent:** Tuesday, March 5, 2019 8:12 AM  
**To:** Campbell, Rich <Campbell.Rich@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Kermish, Laurie <Kermish.Laurie@epa.gov>; Goldmann, Elizabeth <Goldmann.Elizabeth@epa.gov>  
**Subject:** Draft email for your review this morning

Sent from my iPhone

ATTORNEY-CLIENT PRIVILEGED AND WORK PRODUCT; DO NOT RELEASE UNDER FOIA

**Attorney Work Product / Attorney Client/ Deliberative Ex. 5**

## Attorney Work Product / Attorney Client / Deliberative Ex. 5

Sent from my iPhone

On Mar 4, 2019, at 6:25 PM, Stoker, Michael B. <[stoker.michael@epa.gov](mailto:stoker.michael@epa.gov)> wrote:

Sylvia,

Remember to have someone in your office respond to this and copy me.

Michael Stoker

EPA Regional Administrator-Region 9

Cell: Personal Matters / Ex. 6

Begin forwarded message:

**From:** Stu Gillespie <[sgillespie@earthjustice.org](mailto:sgillespie@earthjustice.org)>  
**Date:** March 1, 2019 at 1:58:24 PM PST  
**To:** "stoker.michael@epa.gov" <[stoker.michael@epa.gov](mailto:stoker.michael@epa.gov)>  
**Cc:** Heidi McIntosh <[hmcintosh@earthjustice.org](mailto:hmcintosh@earthjustice.org)>  
**Subject:** FW: Rosemont Mine application, Arizona

Dear Mr. Stoker –

I appreciated the opportunity to briefly speak with you over the phone. I realize that you were travelling, and thus have followed up with my concerns (as you instructed) in the email below.

I represent the Tohono O'odham Nation, Pascua Yaqui Tribe, and Hopi Tribe in regards to the proposed Rosemont open-pit copper mine that would be located on the Tribes' ancestral homelands in the Santa Rita Mountains near Tucson, Arizona. Late yesterday evening, you informed the Tribes that you did not plan to exercise your authority to elevate the U.S. Army Corps' decision to grant a 404 permit for the mine for EPA Headquarters' level review. If you do not exercise your authority to elevate the permit, the Corps can promptly issue the permit to Rosemont, resulting in significant adverse impacts to aquatic resources and profoundly impacting historic resources of deep cultural, religious, and spiritual importance to the Tribes.

The Tribes respectfully request the opportunity for meaningful government-to-government consultation with you regarding this monumental decision. Section 106 of the National Historic Preservation Act (NHPA) imposes an obligation on federal agencies to consult with tribal nations before a decision is made on a federal undertaking. See *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999). The purpose of consultation with Indian tribes under the NHPA is to ensure that all types of historic properties and all public interests in such properties are given due consideration. See *Te-Moak Tribe v. U.S. Dep't of Interior*, 608 F.3d 592, 609 (9th Cir. 2010). The EPA

acknowledges its trust obligations to tribes and the need for meaningful consultation to "assure that tribal concerns and interests are considered *whenever* EPA's actions and/or decisions may affect" tribes. See EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), 2 (emphasis added).

You have not, however, engaged in any consultation with tribal leaders regarding your decision to not elevate the 404 Permit for higher review. Your email yesterday evening was too little too late. It did not provide tribal leaders with an opportunity to respond, let alone engage in consultation. Indeed, your email suggests that you had made your decision, before even reaching out to the tribes. I thus respectfully request that you seek an extension of time to the 15-day period to review the proposed permit so that you can meaningfully consult with tribal leaders regarding the significant impacts of the proposed Rosemont mine on aquatic, cultural, religious, spiritual, and historic properties. This consultation process is essential to determine whether or not to elevate the permit, which could result in the EPA denying, restricting, or withdrawing the proposed disposal site for dredge and fill material.

I look forward to your prompt response regarding this critical and time-sensitive matter.

Sincerely,  
Stuart Gillespie

**From:** "Strauss, Alexis"  
<Strauss.Alexis@epa.gov>  
**Date:** February 28, 2019 at 7:21:10 PM  
EST  
**To:** "Stephen.Lewis@gric.nsn.us"  
<Stephen.Lewis@gric.nsn.us>,  
"robert.valencia@pascuayaqui-nsn.gov"  
<robert.valencia@pascuayaqui-  
nsn.gov>] **Personal Matters / Ex. 6**  
**Personal Matters / Ex. 6** "jrusell-  
winiecki@yan-tribe.org" <jrusell-  
winiecki@yan-tribe.org>, "bball@ak-  
chin.nsn.us" <bball@ak-chin.nsn.us>,  
"Dale.Ohnmeiss.DEQ@gric.nsn.us"  
<Dale.Ohnmeiss.DEQ@gric.nsn.us>,  
"chonyumtewa@hopi.nsn.us"  
<chonyumtewa@hopi.nsn.us>,  
"stautolo@pascuayaqui-nsn.gov"  
<stautolo@pascuayaqui-nsn.gov>,  
"christopher.horan@srpmic-nsn.gov"  
<christopher.horan@srpmic-nsn.gov>,  
"loretta.stone@scat-nsn.gov"  
<loretta.stone@scat-nsn.gov>,  
"cornelius.antone@tonation-nsn.gov"

<cornelius.antone@tonation-nsn.gov>,  
"BrendaPusher-Begay@wmat.us"  
<BrendaPusher-Begay@wmat.us>,  
"dlewis@yan-tribe.org" <dlewis@yan-  
tribe.org>,  
"jennifer.heminokeky@fortsillapache-  
nsn.gov"  
<jennifer.heminokeky@fortsillapache-  
nsn.gov>, "thora@mescalerodrmrp.org"  
<thora@mescalerodrmrp.org>,  
"tammy.parker@ashiwi.org"  
<tammy.parker@ashiwi.org>

**Cc:** "Stoker, Michael B."  
<stoker.michael@epa.gov>, "Munoz,  
Charles" <munoz.charles@epa.gov>  
**Subject:** Rosemont Mine application,  
Arizona

Dear Governor Lewis, Chairman  
Valencia, Chairperson Rambler,  
Chairwoman Russell-Winiecki, and  
Tribal EPA Directors Ball, Ohnmeiss,  
Honyupmtewa, Tautolo, Horan, Stone,  
Antone, Pusher-Begay, Lewis,  
Heminokeky, Padilla and Parker,

As Regional Administrator, I send you  
my respectful greeting, and regret the  
need to reach you in this more  
impersonal manner. I am presently  
away from the Regional Office, but  
wanted to convey some time-sensitive  
information. Our US EPA Regional  
Office has received from the U S Army  
Corps of Engineers its Notice Of Intent  
to issue a Clean Water Act permit for  
the proposed Rosemont Mine in  
Arizona.

I'm addressing this to you as in prior  
years the U. S. Forest Service had  
consulted with the twelve tribal  
governments listed here as it prepared  
an Environmental Impact Statement for  
this proposal. Per a 1992  
Memorandum of Agreement (MOA)  
between the EPA and Army Corps  
regarding Clean Water Act permitting,  
EPA is given 15 days to review the  
proposed permit. I have decided not to  
elevate this matter for further review.

I am providing you with this update today given the brief time provided to EPA in the above-noted MOA. Should you wish to discuss this further, please call me at (213) 215-3104, or email me at [stoker.michael@epa.gov](mailto:stoker.michael@epa.gov) and we can set up a mutually convenient time to talk.

Sincerely yours,  
Mike Stoker

Michael Stoker  
Regional Administrator  
E.P.A. Region 9  
75 Hawthorne Street  
San Francisco, CA 94105